

REMARKS

The Examiner has restricted the present application into five groups of claims, as set forth in Paper No. 7. The Examiner further restricted Groups I-V according to MPEP 803.04 which recites that a single amino acid sequence or up to 10 nucleic acid sequences will be examined in a single application without restriction. Applicants elect to prosecute Group I, nucleic acid SEQ ID NO: 1875 and protein SEQ ID NO:1873, with traverse. Specifically, Applicants traverse the sequence election with respect to SEQ ID NOs. 1872-1876 and further traverse the restriction between Group I and Group II.

A. With respect to the sequence restriction under MPEP 803.04, Applicants respectfully argue that SEQ ID NOs. 1872-1876 should all be prosecuted together. As set forth in the specification, SEQ ID NOs. 1872 and 1875 each represents a cDNA encoding protein SEQ ID NO:1873, the difference between SEQ ID NOs. 1872 and 1875 being that the former contains 3' and 5' untranslated regions whereas the latter does not. SEQ ID NOs. 1874 and 1876 represent sequences complementary to SEQ ID NOs. 1872 and 1875, respectively. As such, SEQ ID NOs. 1872-1876 should be examined together.

B. With respect to the restriction between Groups I and II, Applicants note that the method of producing a protein recited in Group II contains all the limitations of the nucleic acid claims of Group I. The Patent Office may require restriction if two or more independent and distinct inventions are claimed in one application. However, if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. M.P.E.P. § 803. Applicants submit that a thorough search for Group I should also include the subject matter of Group II to the extent of the elected group. In the present case, the subject matter of these Groups cited by the Examiner, is sufficiently small and is so closely related as to be capable of examination together. The restriction requirements in this case only serve to increase the prosecution expense to the Applicants and to the Patent and Trademark Office. In view of the foregoing arguments, Applicants respectfully request that the Examiner withdraw the restriction between Group I and Group II.

Applicants reserve the right to traverse restrictions between Groups II-V in subsequent divisional applications. Applicants also reserve the right to file a divisional application relating to these claims without the necessity of filing a terminal disclaimer. In any event, if the elected

claims of Group I are found allowable, Applicants reserve their right to amend the claim of Group II to be commensurate in scope with the product claims of Group I, and to request that the claims of Group II that depend from or otherwise include all the limitations of the allowable product be rejoined and examined for patentability. In re Brouwer, 37 USPQ2d 1663 (Fed. Cir. 1996); In re Ochiai, 37 USPQ2d 1127 (Fed. Cir. 1995).

2. Amendment of Inventorship under 37 C.F.R. 1.48(b)

Applicants have reviewed the elected claims of the present application and determined that the restriction requirement and election to prosecute Groups I and II necessitates a change of inventorship. Therefore, Applicants are correcting inventorship by submission of a petition as required by 37 CFR § 1.48(b) and the fee set forth in 37 CFR § 1.17(i). By way of this amendment of inventorship, originally named inventors Dan T. Stinchcomb and Kevin S. Brandt have been removed as inventors. The remaining inventors are Nancy Wisnewski and Patrick J. Gaines.

In the event the Examiner has any questions regarding this application, the Examiner is invited to contact the Applicants' undersigned representative.

Respectfully submitted,

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